UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff,

v. Criminal Action No. 3:19-cr-32-DJH

THOMAS SPRATLEY, Defendant.

* * * * *

**ORDER**

On July 22, 2018, Louisville Metro Police Department officers detained and searched Defendant Thomas Spratley. Spratley had been leaning against his parked car sharing a cigarette with a friend when two younger men, who had been walking toward Spratley, fled after the officers turned on their police lights. Spratley did not flee. LMPD officers detained Spratley until a K-9 unit arrived and alerted near his car. The officers eventually took Spratley's keys, unlocked his car, and discovered a gun inside. Spratley was charged with being a felon unlawfully in possession of a firearm. Spratley has moved to suppress the fruits of the search. (Docket No. 18) For the following reasons, the Court will grant Spratley's motion.

**I.**

Detectives Matthew Gammons and Beau Gadegaard of LMPD's Ninth Mobile Division were on patrol in an unmarked police car in a "hot spot area" of Louisville on July 22, 2018, when they observed two young men walking down the street wearing sweatshirts with the hoods pulled up, despite the night's heat and humidity. (*Id.*, PageID # 115, 117) The officers made a U-turn to stop and talk to the men and saw them near "the black and white Challenger with the two older gentlemen there, and it looked like they were talking." (*Id.*) The officers pulled up behind the Challenger and then turned on their police lights. (Gadegaard bodycam footage, 00:18–00:20) The two men in hooded sweatshirts immediately fled through an adjacent yard; Gammons gave

chase but never caught up with them. (D.N. 39, PageID # 118) Meanwhile, Gadegaard remained by the car with the two older men—Spratley and his companion, Webb—attempting to investigate what had just occurred. (*Id*.) When Gammons returned from his fruitless pursuit, the officers patted down both Spratley and Webb and found no weapons, money, or drugs. (Gadegaard bodycam footage at 01:41–01:58) Spratley and Webb answered the officers' questions and denied knowing the men in hooded sweatshirts. (*Id*. at 01:32–01:48) They provided identification (*id*. at 01:59–02:38), which allowed the officers to run their names through law enforcement databases to determine if there were any outstanding warrants for either of them; there were none. Gadegaard asked Spratley for permission to search the Challenger, but Spratley refused. (*Id*. at 02:50–03:06) Gadegaard peered into the windows of the Challenger aided by his flashlight but could not see any contraband in plain view. (*Id*. at 05:31–05:50)

Gadegaard requested over his radio that the K-9 unit assigned to the Ninth Mobile come to the scene. (*Id*. at 03:00–03:03) Roughly six minutes later, the K-9 Unit, LMPD's Detective Benzing and Maverick the German Shepherd,[1] arrived. (*Id*. at 05:48–05:52) On the second pass around the Challenger, Maverick alerted near the driver's-side door. (*Id*. at 05:52–06:10) Following the dog alert, Gadegaard discussed with the other officers whether he should obtain a warrant or force the car open. (*Id*. at 07:15–10:39) After patting down Webb a second time (*id*. at 12:15–12:33), Gadegaard decided to take Spratley's keys from his pocket and unlock the Challenger. (*Id*. at 12:57–13:01) Inside, he discovered a firearm beneath the seat. (*Id*. at 13:24)

[1] Benzing and Maverick are a trained narcotics-detection K-9 Unit assigned to LMPD's Ninth Mobile Division. (D.N. 39, PageID # 150–51 ("I have a single purpose dog. He's not a bite dog. All he does is find drugs. He's very good at what he does.")) Benzing was under the impression this was a traffic stop involving drugs: "If an officer has reasonable suspicion that there may be some kind of drug activity, they will call us." (*Id*., PageID # 153; *see id*., PageID # 155)

No drugs were found. The officers then arrested Spratley. He was later charged with being a felon in possession of a firearm. (D.N. 1)

Spratley moved to suppress the gun (D.N. 18), and the Court held an evidentiary hearing on September 11, 2019. (D.N. 38) Spratley claims in his post-hearing brief that the gun is the fruit of an illegal *Terry* stop and that the dog sniff does not establish probable cause because it is inherently unreliable. (D.N. 43) He also challenges the seizure of his keys from his pocket. (*Id*.) The United States filed a post-hearing brief in opposition, arguing that the officers' detention of Spratley was supported by reasonable suspicion and therefore lawful. (D.N. 42)

**II.**

The Fourth Amendment allows a limited range of interactions between police and citizens: "consensual encounters in which contact is initiated by a police officer without any articulable reason whatsoever and the citizen is briefly asked some questions; a temporary involuntary detention or *Terry* stop which must be predicated upon 'reasonable suspicion'; and arrests which must be based on probable cause." *United States v. Carr*, 355 F. App'x 943, 945 (6th Cir. 2009) (citing *United States v. Bueno*, 21 F.3d 120, 123 (6th Cir. 1994)); *see Terry v. Ohio*, 392 U.S. 1 (1968). When evaluating reasonable suspicion, the Court "must consider 'the totality of the circumstances—the whole picture.'" *United States v. Sokolow*, 490 U.S. 1, 8 (1989) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). Although the high-crime locale of a stop is one factor to be considered, "[r]easonable suspicion does not materialize merely because a person 'looked suspicious' and was in a 'high drug problem area.'" *Brown v. Texas*, 443 U.S. 47, 49 (1979); *see also Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) ("An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime . . . ."). Reasonable suspicion cannot

be supported by, and "an officer must not act on[,] an 'inchoate and unparticularized suspicion or hunch.'" *United States v. Keith*, 559 F.3d 499, 503 (6th Cir. 2009) (quoting *United States v. Urrieta*, 520 F.3d 569, 573 (6th Cir. 2008)). While an officer is permitted "to draw reasonable inferences from the facts based on his or her experiences in law enforcement," "[t]he Fourth Amendment simply does not allow detention based on an officer's 'gut feeling' that a suspect is up to no good." *Urrieta*, 520 F.3d at 578 (citing *Terry*, 392 U.S. at 21). The reviewing court must consider the "totality of the circumstances of each case to see whether the detaining officer ha[d] a particularized and objective basis for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (internal quotation marks and citations omitted).

Considering all facts and the totality of the circumstances, the Court must determine whether the evidence presented establishes that Detectives Gammons and Gadegaard had reasonable suspicion to detain Spratley on the street following the flight of the two younger men. Gadegaard testified that when he approached Spratley, Webb, and the men in hooded sweatshirts, "[i]t appeared to me at that point that there was going to be like a hand-to-hand transaction, because the hoods were tied close to their face, and they're walking and they're talking. And then, also, the part of town, it's a high crime area." (D.N. 39, PageID # 167) Gammons testified that the two younger men "were stopped at the car . . . and it looked like they were talking." (D.N. 39, PageID # 117) Gadegaard's basis for detaining Spratley therefore consists of the following: (1) the fact that, on a warm night, Spratley appeared to be talking to two young men dressed in hooded sweatshirts with the strings pulled in such a way as to obscure their faces; (2) Spratley was standing outside in a high-crime area at night; and (3) the men in hooded sweatshirts fled on foot when the police activated their lights.

The Sixth Circuit has upheld police officers' investigatory detentions based on reasonable suspicion when a suspect makes hand movements consistent with a drug transaction or the officers witness "furtive" or evasive behavior consistent with hiding something from the police. *See, e.g.*, *United States v. Jones*, 562 F.3d 768, 777 (6th Cir. 2009) (finding reasonable suspicion when defendant reacted to police presence in a "nervous and frightened manner" and "jumped out of the car as though to run" in a way that suggested he was holding a firearm); *United States v. Paulette*, 457 F.3d 601, 606 (6th Cir. 2006) (finding reasonable suspicion when officers observed apparent hand-to-hand transaction and the defendant subsequently attempted to evade officers); *cf. Patterson v. City of Cleveland*, No. 97-4226, 1999 WL 68576, at *6 (6th Cir. Jan. 21, 1999) (unpublished opinion) (finding no reasonable suspicion when two men who appeared to have exchanged something separated their hands and "walked quickly up the street when a police car appeared"). In contrast, the government presented no evidence that the officers saw Spratley make any furtive or evasive movements or engage in any conduct that would suggest an exchange between Spratley and the men in hooded sweatshirts.

Instead, this case more closely resembles the facts in *Keith*, where the Sixth Circuit reversed the district court's denial of the defendant's motion to suppress. 559 F.3d 499. Keith was operating a vehicle parked in the drive-through of a local mini-mart late at night when another individual walked up to his window and briefly stuck his head into the car. *Id*. at 501. The two spoke, with the second person glancing back at the officers positioned across the parking lot with their lights activated, then moved to the opposite side of the building where the officers could not see them. *Id*. at 502. Suspicious of possible drug activity, the officers followed both individuals out of the parking lot, eventually pulling over Keith and searching his vehicle. *Id*. Upon review, the Sixth Circuit held that the officers unlawfully detained Keith because "this sequence of events

was insufficient to provide the officers with reasonable suspicion that a crime had been committed" since they had seen no direct evidence of a hand-to-hand transaction and the remaining suspicious circumstances—the late hour, potentially peculiar movement around the parking lot, and high-crime neighborhood—were "not enough, under the Fourth Amendment, to justify the intrusion of a police stop." *Id*. at 507; *see also United States v. Johnson*, 620 F.3d 685 (6th Cir. 2010) (finding that defendant walking through high-crime area late at night, ignoring police commands to stop, and tossing a duffel bag into a waiting car did not amount to reasonable suspicion); *Joshua v. DeWitt*, 341 F.3d 430, 443–44 (6th Cir. 2003) (rejecting state court's reliance on "furtive gestures" where record did not indicate that suspects engaged in specific furtive conduct).

As in *Keith*, the officers here observed no movements or behavior by Spratley indicative of a drug transaction, or of an attempt to hide evidence of such a transaction. Spratley was standing on a public sidewalk next to his own car; at most, he had a brief conversation with two oddly dressed men. Spratley then cooperated with the officers by providing identification with no attempt to evade them or their questions. (*See* Gadegaard bodycam footage at 01:59–02:38) Unlike *United States v. Hensley*, where the Supreme Court upheld a finding of reasonable suspicion when police responded to an anonymous tip, stopped the defendant, and asked him for identification, here Gadegaard and Gammons observed nothing to support a claim of reasonable suspicion, beyond the actions of the men in hooded sweatshirts. 469 U.S. 221, 232 (1985) And although *Sokolow* instructs that individually lawful acts, "taken together," can "amount to reasonable suspicion," the officers here simply did not observe behavior by Spratley which amounted to reasonable suspicion that a crime had been committed. 490 U.S. at 8.

Nor do the time and place of the stop provide reasonable suspicion. First, the fact that Spratley was standing in a high-crime neighborhood late at night represents only a "context-based"

consideration that would have applied to anyone in the area; it thus "should not be given undue weight," *United States v. See*, 574 F.3d 309, 314 (6th Cir. 2009), and "may not, without more, give rise to reasonable suspicion." *Johnson*, 620 F.3d at 692–93 (citing *United States v. Caruthers*, 458 F.2d 459, 467 (6th Cir. 2006) (observing that "labeling an area 'high-crime' raises special concerns of racial, ethnic, and socioeconomic profiling")). The only other conduct the officers observed by Spratley was that he may have been talking to the two suspiciously dressed younger men. It therefore "appeared to" Gadegaard that there was potential for a hand-to-hand transaction. (D.N. 39, PageID # 167) This case thus lacks the "stronger indicators of criminal conduct that have accompanied these minor factors" in cases where the Sixth Circuit has found reasonable suspicion. *Keith*, 559 F.3d at 504. Spratley did no more than the defendant in *Keith* to arouse reasonable suspicion, and Gadegaard's feeling that a drug transaction was imminent was merely an "inchoate and unparticularized suspicion or hunch" that cannot justify a *Terry* stop. *Keith*, 559 F.3d at 503 (quoting *Urrieta*, 520 F.3d at 573).

Importantly, any suspicion the officers had regarding the men in hooded sweatshirts cannot justify the detention and search of Spratley; "the Supreme Court has made clear . . . that a warrantless search must be based on *individualized* suspicion." *United States v. Patterson*, 340 F.3d 368, 372 (6th Cir. 2003) (citing *Chandler v. Miller*, 520 U.S. 305, 313 (1997)) (emphasis added). Like the officers in *Patterson*, Gadegaard witnessed a group of people congregating on a public sidewalk. *Id*. at 369. But in *Patterson*, the officers approached the group of men in response to a tip. And they observed a member of the group—not Patterson—throwing something towards nearby bushes. *Id*. at 370. Even with the tip, the Sixth Circuit held that reasonable suspicion to detain Patterson could only be drawn from "Patterson's actions and the circumstances surrounding him alone"; the officers' observation of another member of the group engaging in the suspicious

act of throwing something into the bushes did not provide reasonable suspicion as to Patterson. *Id*. at 372. Thus, even if the officers had observed enough to establish reasonable suspicion as to the other members of his group, that suspicion could not transfer to Patterson and justify the officers' detention of him.

Likewise, in *United States v. Williams*, the Sixth Circuit upheld the district court's order to suppress because it found that the officers lacked reasonable suspicion to detain Williams. 615 F.3d 657 (6th Cir. 2010). The officers did not see Williams acting criminally, but the government nonetheless argued that the officers "had reasonable suspicion that Williams had recently violated the law or was about to do so" because he was standing near a group of individuals who could have been trespassing. "[T]he government's argument [was] really that Williams *might* have been trespassing because he was with other people who *might* have been trespassing." *Id*. at 668. The Sixth Circuit held that law enforcement's suspicion that Williams was engaged in criminal activity because he was interacting with others who might also have been engaging in that activity represents the "sort of guesswork [that] is not remotely enough for reasonable suspicion." *Id.* at 667–68; *see also United States v. Williams*, 731 F.3d 678, 681 (7th Cir. 2013) (holding that officers' observation of a group potentially involved in drug-dealing did not create individualized reasonable suspicion as to one particular member without more); *United States v. Black*, 707 F.3d 531, 541 (4th Cir. 2013) (finding that defendant's proximity to an individual carrying a gun did not create reasonable suspicion as to the defendant).

In this case, Gammons testified that he and Gadegaard "had suspicion of the two younger males walking down the street due to that area and their clothing and whatnot. Once they started talking to the two other gentlemen, that even raised even more suspicion. . . . And then once they took off flight from us, once we hit our emergency equipment, that even elevated it even more,

because if you take off from us when we turn the lights on, then something's—you're doing something that you're not supposed to be doing." (D.N. 39, PageID # 142–43) Thus, the total of the particularized suspicious activity related solely to the two men in hooded sweatshirts. The officers provided no testimony regarding suspicious conduct by Spratley. The officers observed the brief interaction between the men in hooded sweatshirts and Spratley. Spratley was not dressed unseasonably, and he did not run when the officers turned on their police lights. The conduct that gave rise to the officers' suspicions as to the two men in sweatshirts does not transfer to Spratley, and therefore "the circumstances surrounding him alone" do not amount to reasonable suspicion. *Patterson*, 340 F.3d at 372.

It is important to note that this case does not present the scenario of a *Terry* stop conducted following a traffic stop. But the officers clearly treated it as a traffic stop. (*See* D.N. 39, PageID # 155 ("Q. Detective, was it your understanding that this was a traffic stop? A. Yes.")) The officers here did not observe Spratley driving; instead, he was leaning against his legally parked and locked car. The officers observed no traffic-related infraction. In *United States v. Gross*, the Court of Appeals distinguished between the reasonable-suspicion inquiry applied when an officer observes a traffic violation and when an officer finds a suspect in a legally parked car. 662 F.3d 393 (6th Cir. 2011). There, the officer observed a legally parked car, engine running, with Gross slumped over in his seat. *Id*. at 396–97. The officer parked behind the car, turned on his police lights, then approached the car window and asked the passenger for identifying information; that information revealed that Gross had an outstanding warrant, and he was consequently arrested. *Id*. at 397. The Sixth Circuit held that it was "readily apparent that, under the circumstances, [the officer] did not have a particularized and objective basis for suspecting Gross of criminal activity at the time of the stop" since his car was legally parked and the officer could not observe any other

suspicious activity. *Id*. at 400. The *Gross* court distinguished *United States v. Koger*, where an investigatory stop of a parked car was upheld because of the "readily apparent illegality that was present" since Koger's car was illegally parked. *Id*. (citing 152 F. App'x 429, 430–31 (6th Cir. 2005)); *see also United States v. Hill*, 752 F.3d 1029, 1032 (5th Cir. 2014) (holding that reasonable suspicion was not established as to the driver of a legally parked car when officers saw the car's passenger exit the vehicle and briskly walk away from police); *United States v. Scott*, No. CR 19-17-DLB-CJS, 2019 WL 3535905, at *6 (E.D. Ky. Aug. 2, 2019) (holding that officer's observation of individual entering and exiting legally parked car was insufficient to establish reasonable suspicion of drug activity). Here, Spratley was standing outside of his legally parked car; it was not obstructing traffic like the car in *Koger* or violating a traffic ordinance of any kind. Spratley's car thus did not give rise to reasonable suspicion of a vehicle-related infraction. *See Gross*, 662 F.3d at 400 (distinguishing *Koger*, 152 F. App'x at 430–31).

Finally, Spratley's detention was inappropriate because, even if initially lawful, it exceeded the permissible scope of a *Terry* stop. A *Terry* stop "permits law enforcement to 'detain [a] person briefly in order to *investigate the circumstances that provoke suspicion*.'" *United States v. Foster*, 376 F.3d 577, 586 (6th Cir. 2004) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984)). "[W]hen a law enforcement officer no longer has any reasonable suspicion of criminal activity, the detained individual is constitutionally free to leave." *United States v. Erwin*, 155 F.3d 818, 823 (6th Cir. 1998) (en banc). Here, if the officers had reasonable suspicion of any crime, based upon their testimony, it would have been suspicion of a drug transaction. Once the officers completed the pat-down searches of Spratley and Webb, finding no weapons or drugs, and peered into Spratley's vehicle with a flashlight, again observing no contraband, any reasonable suspicion dissipated. (*See* Gadegaard bodycam footage at 01:41–01:58; 05:31–05:50) Detective Benzing

and his K-9 had not yet arrived; there was no independent source of reasonable suspicion to detain Spratley. After the searches were completed with no results, Spratley was "constitutionally free to leave." *Erwin*, 155 F.3d at 823. Thus, even assuming that Spratley's initial detention was lawful, the detention was unlawfully extended.

**III.**

The United States has failed to present evidence from which the Court could conclude that Detectives Gadegaard and Gammons had reasonable and individualized suspicion to detain Spratley. Because the Court finds that "the initial *Terry* stop was unlawful . . . the evidence that resulted from the subsequent search . . . must be suppressed as the fruit of the poisonous tree." *See*, 574 F.3d at 314 (citing *Wong Sun v. United States*, 371 U.S. 471 (1963)). The Court declines to address Spratley's remaining arguments regarding the extension of the stop while awaiting the K-9, the probable cause provided by the dog sniff, and the seizure of Spratley's keys from his pocket because those events directly resulted from the initial unlawful seizure. The gun will therefore be suppressed notwithstanding any later-established probable cause. *See id.* Accordingly, and the Court being otherwise sufficiently advised, it is hereby

**ORDERED** that Spratley's motion to suppress evidence collected from the July 22 stop (D.N. 18) is **GRANTED**.

November 22, 2019

**David J. Hale, Judge**
**United States District Court**